

Calendar No. 1050

91st CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-1045

JACK BROWN

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1697]

The Committee on the Judiciary, to which was referred the bill (H.R. 1697) for the relief of Jack Brown, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation, is to pay \$751.50 to Jack Brown, former superintendent and special disbursing agent for the Sequoyah Orphan Training School of Tahlequah, Okla., in full settlement of his claims against the United States for the payment he was required to make on January 12, 1939, from his personal funds due to an exception taken by the General Accounting Office to the purchase of a water pipeline right-of-way in behalf of the United States.

STATEMENT

The Department of the Interior in its report to the House Judiciary Committee on the bill recommends that the bill be enacted.

The history of this matter dates back to June 2, 1932, when Mr. Jack Brown was authorized by the Bureau of Indian Affairs of the Department of the Interior to obtain the necessary right-of-way and material to provide a water supply for the Sequoyah Orphan Training School. At that time, it was considered an emergency move because the water supply for the school then obtained from wells had become polluted.

Prior to beginning construction of the water line, the light and water department of the city of Tahlequah procured easements from individual property owners involving 10 tracts of land. The city of Tahlequah paid for the easements with funds under its control with the understanding that it would be reimbursed by the Bureau of Indian Affairs. Before payment was made to the city, Mr. Brown submitted a voucher to the central office of the Bureau for preaudit. On March 20, 1933, the voucher was returned with approval for payment direct to the claimant from funds allocated for this project, and upon its receipt, \$751.50 was paid to the city light and water department, Tahlequah, Okla. This is the \$751.50 which is referred to in the bill.

The next development in connection with the efforts to secure the right-of-way occurred when by a radiogram, also dated March 20, 1933, the Commissioner of Indian Affairs instructed Mr. Brown to obtain and forward separate transfers of the easements from the city to the Sequoyah Orphan Training School and the United States of America, together with certificate of good title in the grantor.

By letter of April 12, 1933, Superintendent Brown submitted a resolution, signed by the mayor of the city of Tahlequah, Okla., authorizing and directing Mr. Dohe, superintendent of the city light and water department, to execute a conveyance of all right, title, and interest of the department in and to the easements to the United States of America. Also submitted was an assignment, signed by Mr. Dohe, in favor of Sequoyah Orphan Training School of the Department of the Interior, United States of America, with certificates of title from the Cherokee Capitol Abstract Co. All of these documents were submitted to the Department of the Interior and were returned by memorandum of June 20, 1933, signed by the first assistant secretary, wherein certain objections to the documents were raised and the need for title curative instruments outlined.

Thereafter, extensive correspondence was exchanged between the Bureau and Superintendent Brown relating to the title curative work and the mounting difficulties experienced by the Superintendent, due to the numerous conveyances affecting titles to the various parcels crossed by the pipeline. Each transfer of title necessitated a change in the title curative documents. Although Mr. Brown had expended \$677.50 to acquire title and \$74 for expenses, or a total of \$751.50 as authorized, the Comptroller General, in a notice of exception dated October 2, 1933, took exception to his accounts on the ground that the act of April 22, 1932 (47 Stat. 104), which authorized the purchase of necessary rights-of-way for a water supply, did not contemplate the purchase thereof except directly through the agencies of Government. In addition, Mr. Brown was required by the General Accounting Office to show evidence of receipt of payment by the persons receiving the money, together with evidence of transfer of the right-of-way to the Government and evidence that good title was then in the Government. In order to clear the Comptroller General's exception to his accounts, Mr. Brown deposited the sum of \$751.50 from his own funds with the Treasury of the United States on January 12, 1939, as directed by General Accounting Office letter of December 30, 1938.

The record discloses that subsequent to making such deposit, Mr. Brown continued diligently to pursue the matter of obtaining the required title documents which would vest title in the United States. He obtained new easement deeds from the owners of eight parcels crossed by the right-of-way, together with supporting title data. Six of the deeds were approved by the Department. By letter of July 7, 1941, the Superintendent was informed that the other two deeds appeared to be in proper form and were returned for recordation with abstracts or certificates showing good title in the United States. In addition, he was authorized to negotiate with the owners of the remaining two tracts for new deeds.

Due to the fact that the original owners had moved from the State and the new owners, before agreeing to sign, demanded concessions not in the best interests of the school. Mr. Brown was unable to obtain new deeds covering these two remaining tracts.

The committee feels that the foregoing statement of facts demonstrates that justice and equity clearly require that Mr. Brown be paid the \$751.50 authorized by this bill. The United States has continuously enjoyed the benefits of the use of the right-of-way in the intervening period and it is further clear that Mr. Brown did everything within his power to correct the situation as regards the defects in the conveyances which were the basis for the exception by the General Accounting Office. The committee agrees with the conclusions stated by the Department of the Interior in its report. That Department stated as follows:

The pipeline laid within the right-of-way in question has served the United States and the school for over 30 years without objection, controversy, or claim arising from the rights of the United States in and to this easement. Mr. Brown's diligence in complying with the shifting title requirements is spread on the record. He was authorized by his supervisors to spend the money he spent to acquire title to these lands, and the passage of time without incident is proof that his work was well done. It is our opinion that in view of the more than 30 years of trouble-free benefit enjoyed by the Government and the school, Mr. Brown deserves to have his funds reimbursed.

It is recommended that the bill be considered favorably.

Attached hereto and made a part hereof are the reports submitted to the House Judiciary Committee from the Department of the Interior and the Comptroller General of the United States:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 12, 1969.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on H.R. 1697, a bill "For the relief of Jack Brown."

We recommend that the bill be enacted.

H.R. 1697 authorizes and directs the Secretary of the Treasury to pay to Jack Brown, former superintendent and special disbursing agent for the Sequoyah Orphan Training School of Tahlequah, Okla., the sum of \$751.50 in full settlement of his claim against the United States. It is further provided that not more than 10 percent of the amount appropriated for payment to Jack Brown shall be paid to or received by any agent or attorney on account of services rendered in connection with the claim, and that any persons violating this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

The \$751.50 that this bill authorizes and directs the Secretary of the Treasury to pay to Jack Brown would be a refund of money paid by Mr. Brown to the U.S. Government from his personal funds in compliance with a General Accounting Office exception to his account involving a water pipeline right-of-way.

On June 2, 1932, Mr. Brown was authorized by the Bureau of Indian Affairs, a Bureau of this Department, to obtain the necessary rights-of-way and materials to provide a proper water supply for the Sequoyah Orphan Training School. This was considered an emergency matter because the water supply for the school, then obtained from wells, had become polluted.

Prior to beginning construction of the water line, the light and water department of the city of Tahlequah procured easements from individual property owners involving 10 tracts of land. The city of Tahlequah paid for the easements with funds under its control with the understanding that it would be reimbursed by the Bureau of Indian Affairs.

Before payment was made to the city, Mr. Brown submitted a voucher to the central office of the Bureau for preaudit. On March 20, 1933, the voucher was returned with approval for payment direct to the claimant from funds allocated for this project, and upon its receipt, \$751.50 was paid to the city light and water department, Tahlequah, Okla.

By radiogram, also dated March 20, 1933, the Commissioner of Indian Affairs instructed Mr. Brown to obtain and forward separate transfers of the easements from the city to the Sequoyah Orphan Training School and the United States of America, together with certificate of good title in the grantor.

By letter of April 12, 1933, Superintendent Brown submitted a resolution, signed by the mayor of the city of Tahlequah, Okla., authorizing and directing Mr. Dohe, superintendent of the city light and water department, to execute a conveyance of all right, title, and interest of the department in and to the easement to the United States of America. Also submitted was an assignment, signed by Mr. Dohe, in favor of Sequoyah Orphan Training School of the Department of the Interior, United States of America, with certificates of title from the Cherokee Capitol Abstract Co. All of these documents were submitted to the Department of the Interior and were returned by memorandum of June 20, 1933, signed by the first assistant secretary, wherein certain objections to the documents were raised and the need for title curative instruments outlined.

Thereafter, extensive correspondence was exchanged between the Bureau and Superintendent Brown relating to the title curative work and the mounting difficulties experienced by the superintendent, due to the numerous conveyances affecting titles to the various parcels crossed by the pipeline. Each transfer of title necessitated a change in the title curative documents. Although Mr. Brown had expended \$677.50 to acquire title and \$74.00 for expenses, or a total of \$751.50 as authorized, the Comptroller General, in a notice of exception dated October 2, 1933 took exception to his accounts on the ground that the act of April 22, 1932 (47 Stat. 104), which authorized the purchase of necessary rights-of-way for a water supply, did not contemplate the purchase thereof except directly through the agencies of Government. In addition, Mr. Brown was required by the General Accounting Office to show evidence of receipt of payment by the persons receiving the money, together with evidence of transfer of the right-of-way to the Government and evidence that good title was then in the Government. In order to clear the Comptroller General's exception to his accounts, Mr. Brown deposited the sum of \$751.50 from his own funds with the Treasury of the United States on January 12, 1939, as directed by General Accounting Office letter of December 30, 1938.

The record discloses that subsequent to making such deposit, Mr. Brown continued diligently to pursue the matter of obtaining the required title documents which would vest title in the United States. He obtained new easement deeds from the owners of eight parcels crossed by the right-of-way, together with supporting title data. Six of the deeds were approved by the department. By letter of July 7, 1941, the superintendent was informed that the other two deeds appeared to be in proper form and were returned for recordation with abstracts or certificates showing good title in the United States. In addition, he was authorized to negotiate with the owners of the remaining two tracts for new deeds.

Due to the fact that the original owners had moved from the State and the new owners, before agreeing to sign, demanded concessions not in the best interests of the school, Mr. Brown was unable to obtain new deeds covering these two remaining tracts.

The pipeline laid within the right-of-way in question has served the United States and the school for over 30 years without objection, controversy, or claim arising from the rights of the United States in and to this easement. Mr. Brown's diligence in complying with the shifting title requirements is spread on the record. He was authorized by his supervisors to spend the money he spent to acquire title to these lands, and the passage of time without incident is proof that his work was well done. It is our opinion that in view of the more than 30 years of trouble-free benefit enjoyed by the Government and the school, Mr. Brown deserves to have his funds reimbursed.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

RUSSELL E. TRAIN.
Under Secretary of the Interior.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 13, 1969.

B-157618.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
 House of Representatives*

DEAR MR. CHAIRMAN: Your letter of January 29, 1969, transmitted copies of H.R. 1697, entitled "A bill for the relief of Jack Brown," and requested an expression of our views thereon.

The bill proposes to repay to Mr. Jack Brown, former superintendent and special disbursing agent for the Sequoyah Orphan Training School of Tahlequah, Okla., the amount of \$751.50 which he paid to the United States on January 12, 1939, to cover his purchase of a pipeline right-of-way which had been declared by the General Accounting Office to be not authorized.

Mr. Brown's claim for refund of this amount was the subject of our decision of November 15, 1965, B-157618, to the Secretary of the Interior. That decision, which was published at 45 Comptroller General 249, disallowed the claim on the basis that it was barred by the act of October 9, 1940, chapter 788, 54 Stat. 1061, codified at 31 U.S.C. 71a, which expressly prohibits consideration by our Office of claims filed here later than 10 full years after the date of their accrual. A copy of the cited decision is enclosed.

We do not generally approve of the enactment of legislation to pay claims barred by our statute of limitations. It is our belief that the 10-year period provided by that statute constitutes more than adequate time for the filing of any claims which may have accrued against the United States. Moreover, such a bill would constitute preferential treatment for the party or parties involved as against the numerous others who have been or will be in the same position, defeat the purpose of the statute of limitation, and establish an undesirable precedent.

In the present instance it appears that the objection to the payment made by Mr. Brown was based primarily upon the method of procuring the rights-of-way in question and not upon any basic lack of authority to procure them. Also, it is clear that the Government has enjoyed trouble-free benefits from these rights-of-way for more than 35 years. Hence, we would not object if the Congress sees fit to give favorable consideration to this bill.

Four copies of this report are furnished as requested.

Sincerely yours,

R. F. KELLER,
(For the Comptroller General of the United States.)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 15, 1965.

B-157618.

The Honorable SECRETARY OF THE INTERIOR:

DEAR MR. SECRETARY: By letter dated August 27, 1965, with enclosures, the Chief, Branch of ADP and Finance, Bureau of Indian Affairs, requested a decision on the propriety of refunding the amount of \$751.50 to Mr. Jack Brown, former superintendent and special

S.R. 1045

disbursing agent, Sequovah Orphan Training School, Tahlequah, Okla. The record shows that Mr. Brown, on January 12, 1939, deposited \$751.50 to the credit of the United States to clear his accounts of a General Accounting Office notice of exception, date October 2, 1933.

The notice of exception concerned a payment made to the city of Tahlequah in connection with a water pipeline right-of-way purchased by the city incident to water supply for the school. The exception was based upon the decision published in 6 Comptroller General 568 wherein the general rule was stated that the matter of negotiating for the purchase of lands, or any interests in lands for the United States, is an administrative duty that cannot be delegated to anyone other than to responsible officers of the Government. A detailed explanation was requested by the notice, as well as evidence of receipt of payment by the persons receiving the money together with evidence of transfer of right-of-way to the Government and evidence that good title vested in the Government. The reply of November 20, 1933, to the notice of exception was as follows:

"We have no other authorities to offer as justification for making payment direct except the fifth paragraph of Indian Office letter of February 25, 1933, attached to our reply of September 16, 1933, indicating that the city of Tahlequah was to act in the capacity of agent in securing the right-of-way; also Indian Office letter of March 20, 1933, attached to my reply of September 16, 1933, authorizing payment direct, after claim for Washington settlement had been submitted on form 5-647.

"Relative to evidence of receipt of payment to the various parties granting right-of-ways you are advised that the different documents, or easements, indicate the exact amounts as considerations. No other receipts were secured; payment made by cheques [sic] and photostatic copies could be secured if proper, we propose to use the fund "14X2301, Construction, Bureau of Indian Affairs," to effect payment."

Mr. Brown's request for refund concerns a right of action which accrued upon his complying with the exception requirement. The record shows that Mr. Brown obtained execution of new deeds over the period from March 1939, to March 1941, and that eight deeds were obtained. Although easements to the city were in effect, two owners refused to grant new easements in favor of the United States. Concerning these two parcels, no problem arise during a period of over 30 years over use of the right-of-ways, and, as stated by Mr. Brown concerning the statutory period under which action may be brought in Oklahoma for determination of any adverse right or interest in real property, said period has "run its course more than an additional 15 years."

of a claim such as here involved, and as the matter involves a doubtful

Since no appropriation is available to your Department for payment claim as evidenced by the request for advice in the matter, the claim is one for adjustment and settlement by the General Accounting Office, and in that connection the act of October 9, 1940, chapter 788, 54 Stat. 1061, as codified in 13 U.S.C. 71a, provides—

"(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such

claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within 10 full years after the date such claim first accrued: *Provided*, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within 5 years after its accrual, such claim may be presented within 5 years after peace is established.

“(2) Whenever any claim barred by subsection (1) of this section shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this section, and such action shall be a complete response without further communication.”

The above provision of law expressly prohibits consideration by the General Accounting Office of claims filed here later than 10 full years after the date such claim first accrued. It is apparent from the facts as related above that more than 10 years have passed since Mr. Brown's claim first accrued, and therefore, as a claim was not timely filed in this Office the statute precludes its consideration.

The papers transmitted with the letter of August 27, 1965, are returned herewith.

Sincerely yours,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

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